IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2882 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUO-MOTU - Applicant

Versus

MR.MANOJ DAVE,S/O.DINESHCHANDRA DAVE - Respondent

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Appearance :

SUO MOTU for Applicant.

MR PC KAVINA for Respondent.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 03/05/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

The present contempt proceedings have been initiated suo-motu in view of the order dated March 21, 2006 passed by Division Bench comprising R.S.Garg and Ravi R.Tripathi, JJ., on the ringing of Mobile Phone No. 9426010191 while the Division Bench was hearing Special Civil Application No. 9976 of 1996.

2. When the Division Bench comprising R.S.Garg and Ravi R.Tripathi,JJ, was hearing Special Civil Application No. 9976 of 1996, a cellphone started ringing in the Court-Room. The Court required the holder of the cellphone to stand up and come in front after closing the cellphone. The respondent i.e. Mr.Manoj Dineshchandra Dave, resident of 11/B, Kameshwar-Jay Apartment, Near Sumeru Bungalows, Satellite, Ramdevnagar, Ahmedabad, came in front. When the Court told him that the Court was likely to issue contempt notice to him and asked him to read the notice in English as well as vernacular pasted within the Court-Room, his cellphone again started ringing. It may be mentioned that the Division Bench comprising R.S.Garg and Ravi R.Tripathi,JJ., has

already taken a view that ringing of a mobile-phone in the Court-Room interferes with the work and working of the Court, and as it disturbs the dispensation of justice, the holder of the cellphone, whose cellphone rings in the Court-Room, commits contempt of Court. The Division Bench was, therefore, of the view that Mr.Manoj Dave had committed contempt of the Court. The Court, therefore, issued notice calling upon him to show-cause as to why the offending article be not confiscated and the full sentence, provided under the provisions of law, be not awarded to him and why fine be also not imposed. The Cellphone No. 9426010191 was directed to be taken in the custody and is kept with the Registrar General of the High Court.

3. On issuance of notice, Mr.Manoj Dave has filed affidavit-in-reply dated April 4, 2006 mentioning, inter alia, that he had no intention to cause disturbance in the Court-Room or to disturb the working of the Court, and that ringing of his cellphone was a complete and sudden accident. It is

further stated in the reply that he is working with United Phosphorus Ltd. which has its Head Office at Mumbai, and on March 21, 2006, writ petition of subsidiary company was on board for final hearing before the Division Bench comprising R.S.Garg & Ravi R.Tripathi,JJ., and he had come to instruct the Finance Director and the Company Secretary, who had come from Mumbai. According to him, this was the first occasion in his life on which he had entered Court-Room and that through oversight he did not switch off the Mobile Phone or put it in vibration mode while entering the Court-Room. It is further mentioned in the reply that the circumstances mentioned by him in his affidavit-in-reply do not justify ringing of phone, but, he has prayed that having regard to the facts of the case, Court may forgive his lapse and discharge the contempt notice without any action being taken against him. By filing the reply, Mr. Manoj Dave has tendered unconditional apology to the Court as well as undertaken not to commit such mistake in future and has assured the Court that he would not attend the Court-Room with

Mobile-phone on.

4. Mr.Manoj Dave has also filed further affidavit dated April 27, 2006 mentioning, inter alia, that his Mobile-phone, which was taken in possession of on March 21, 2006, was purchased by him on September 6, 2005 in the sum of Rs. 10,000/-, and as in the said instrument he has stored valuable personal data, he may be handed over possession of his Mobile-phone.

5. This Court has considered the detailed order dated March 21, 2006 passed by the Division Bench comprising R.S.Garg & Ravi R.Tripathi,JJ., and has heard Mr.P.C.Kavina, learned counsel appearing for the contemner. It may be stated that the contemner i.e. Manoj Dineshchandra Dave is personally present in the Court-Room. It is true that the Court has already taken a view that ringing of a mobile-phone in the Court interferes with the work and working of the Court and as it disturbs the dispensation of justice, holder of mobile-phone is liable to be proceeded with under the provisions of the Contempt of Courts Act, 1971. However, in view of the contents

of affidavit-in-reply, it is evident that this was the first occasion on which Mr.Manoj Dave had entered the Court-Room to instruct his higher officers, who had come from Bombay and had through oversight failed to switch off his mobile-phone. From the contents of the affidavit-in-reply, it is evident that he had no intention to cause disturbance in the Court-Room or to disturb the working of the Court. He has tendered sincere apology, which is quite evident from what is stated in Paragraphs 3 & 7 of his affidavit-in-reply. Having regard to the facts of the case, this Court is of the view that the sincere apology tendered by Mr.Manoj Dave deserves to be accepted and he deserves to be discharged as provided in Proviso to sub-section(1) of Section 12 of the Contempt of Courts Act, 1971.

For the foregoing reasons, unconditional apology tendered by Mr.Manoj Dave is hereby accepted. He is discharged from contempt proceedings as provided in Proviso to sub-section (1) of Section 12 of the Contempt of Courts Act, 1971. The Registrar General is directed to hand over the custody of Cellphone

No.9426010191 to Mr.Manoj Dineshchandra Dave after due verification. The contempt proceedings accordingly, are dropped. Notice is discharged. Criminal Misc.Application accordingly stands disposed of.

[J.M.PANCHAL,J.]

[BANKIM N MEHTA,J.]

(patel)